

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 626*

House Bill No. 529

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 13, is amended by adding as a new section the following:

(a) As used in this section, unless the context otherwise requires:

(1) "Broker" has the same meaning as used in Tennessee Code Annotated, Section 62-13-102;

(2) "Commercial Real Estate" means any real estate other than:

(A) Real estate containing one (1) to four (4) residential units; or

(B) Real estate on which no buildings or structures are located and is zoned for no more than one (1) to four (4) family residential use.

Commercial real estate shall not include single family residential units such as condominiums, town houses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis even though these units may be a part of a larger building or parcel of real estate containing more than four (4) residential units;

(3) "Real Estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or non-freehold, situated in this state;

(4) "Owner" means the person or persons to whom the fee interest of real estate is titled and does not include a lessee or renter;

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(5) "Actual Notice" means a writing evidencing an agreement signed by the owner, or the owner's authorized agent, delivered to the party to be charged or that party's broker, affiliate broker or attorney, and received not less than ten (10) business days before the closing of any transfer of ownership to the party to be charged of the commercial real estate that is the subject of such agreement. The burden of proof is on the broker to prove actual notice.

(6) "Constructive Notice" means knowledge imputed by inclusion of a provision specifically referencing an obligation to pay commissions in any brokerage contract or listing agreement, sales contract, lease or memorandum of the foregoing signed by the owner or the owner's authorized agent which identifies the subject real estate by lot number, by street address, or metes and bounds description and which is filed in the office of the register of deeds of the county in which the property is located at least ten (10) business days before the transfer of the commercial real estate that is the subject of the agreement; and

(7) "Subsequent Owner" means a purchaser of real estate from the owner or from a previous subsequent owner.

(b) A broker who pursuant to a contract in writing, has earned and is owed a fee commission from the owner of commercial real estate pursuant to such written contract for his or her services in connection with a sale or lease of commercial real estate, may enforce the contract with respect to such fee or commission against a subsequent owner, even though the subsequent owner is not a party to the contract, if and only if the

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subsequent owner has either actual notice or constructive notice of the contract with respect to such fee before obtaining title to the commercial real estate. There shall be no prohibition against a broker from giving such notice as required by this section, and any such prohibition is void and unenforceable.

(c)(1) The obligation of a subsequent owner shall be subject to the terms, conditions and defenses available to the contracting parties.

(2) Nothing in this section shall be construed to change any agreement between an owner and a subsequent owner or to release an owner from any liability to a broker for such fees or commissions or to restrict or prevent a third party claim by a subsequent owner against an owner or a previous subsequent owner for indemnification against a claim made by a broker against a subsequent owner based on a liability of such owner or a previous subsequent owner to such broker.

(3) A broker or affiliate broker may enforce an obligation under this section against a subsequent owner by filing suit in a court having appropriate jurisdiction within the later of:

(A) One (1) year after the transfer of ownership of the property from the owner or a previous subsequent owner to a subsequent owner, or

(B) One (1) year after the claim for a fee or commission accrues.

(4) A brokerage contract, listing agreement, commercial real estate sales contract, or memorandum thereof, signed by the owner or the owner's authorized agent, providing for the payment of commissions to a broker for the sale or lease of commercial

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real estate, may be filed pursuant to this section in the office of the register of deeds in the county where the property is located, and such register of deeds shall accept such document for filing. Such delivery may be by personal delivery, certified mail, or any delivery service that provides proof of delivery.

(5) Any document that may be registered pursuant to this section shall be deemed to be authenticated and eligible for recordation if such document is acknowledged in the form customary for acknowledgments in the affidavit of at least one (1) of the parties who executed the document. The affidavit shall identify the document as the fully executed original of a document pursuant to which the broker claims a fee or commission with respect to the commercial real estate specified therein, and the fully executed original document shall be attached to the affidavit. The register of deeds shall index such recorded document under the name of the owner identified in the document and according to the address or location of the property.

SECTION 2. This act shall take effect October 1, 1997, the public welfare requiring it.

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